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# HEARING OFFICERS MANUAL USDA



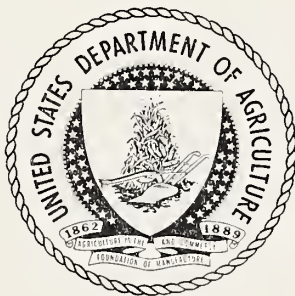
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MESSAGE TO HEARING OFFICERS

The purpose of this manual is to assist you in carrying out your responsibilities under the Department's Disciplinary Appeals Procedure established pursuant to Executive Order 10987.

In the past, disciplinary actions involving removals, suspensions for more than 30 days, reduction in rank or compensation or furlough without pay could only be taken by the Secretary, certain officials of Assistant Secretary level and the Director of Personnel. Moreover, employees did not have a right to a hearing within the Department. Now authority for taking these types of actions has been delegated to the various agencies of the Department. Employees subject to such adverse actions have a right to appeal within the Department with full hearing rights accorded them.

The hearings provided for in the Appeals Procedure are considered a very important part of the appeal process and therefore, the Department has exercised care in the selection of the panel of hearing officers. In conducting a hearing, remember that the primary purpose is to give the employee an opportunity for an impartial review of the adverse action taken against him by his agency; therefore, it is important that you maintain control of the hearing at all times to insure that all of the facts are fully presented and properly recorded into the hearing records.

The Office of Personnel stands ready to assist you in carrying out these objectives. Please feel free to consult this office at any time for information or advice.



Carl B. Barnes  
Director of Personnel



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## HEARING OFFICERS MANUAL - USDA

1. Purpose of this Manual. This manual is intended as a guide to assist Hearing Officers in carrying out their responsibilities under the Department's disciplinary appeals procedure established pursuant to Executive Order No. 10987. It is geared to the procedures outlined in Title 8, Chapter 58, Section III captioned "Appeal Rights and Procedures." An understanding of that chapter is essential for effective conduct of hearings under this procedure.
2. Purpose and Nature of the Hearing Procedure. The hearing provided by this procedure is intended to give the appellant (employee) a chance to be heard in person by an impartial Hearing Officer; to have the facts in his case fully reviewed by examination of witnesses and introduction of records; to have the facts gathered at the hearing recorded and incorporated into the case file; and to have the Hearing Officer's findings and recommendations transmitted to the Secretary of Agriculture for a decision.

The hearings are not intended to approximate a court trial, and courtroom procedures will not be followed. However, the Hearing Officer will use his best judgment to bring forth all the facts pertinent to the case.

It is also intended that the hearings will determine whether the agencies have followed applicable laws, regulations, and policy in taking adverse actions; and whether the penalties imposed were warranted.

These proceedings, generally speaking, will provide a complete review of the adverse action and will not be limited to allegations made by the appellant in his appeal.



3. General Duties of the Hearing Officer. It is the duty of the Hearing Officer to make administrative arrangements for the hearing, including attendance of witnesses; to conduct the hearing so as to elicit all pertinent facts; and to make an advisory memorandum of analysis and recommendation as to whether the action appealed from should be sustained, modified or canceled.

4. Preparing for the Hearing. a. Initiation of appeal procedure. The Director of Personnel will acknowledge the employee's appeal and inform him that his appeal will be referred to a Hearing Officer and that the officer will notify him of the time and place of the hearing. The Director of Personnel will also notify the employee's agency that the appeal has been filed and the agency will forward its entire file in duplicate together with the official personnel folder to the Director of Personnel. The Director of Personnel will select a Hearing Officer and will send to him, concurrently with the notification that he has been named, the file including the letter of charges, the employee's answer, the report of the personal interview, the agency's decision and the investigative report or file of evidence. In no case will the Hearing Officer be employed in the same agency or acquainted in any manner with the employee.

b. Setting the time and place of the hearing. The hearing date shall be set for no later than 20 calendar days after the Hearing Officer's receipt of notification of his selection. The place of the hearing shall be as close as practicable to the employee's place of duty. The Hearing Officer will be responsible for obtaining adequate space for the hearing. Such space should be available without cost in Post Offices, United States Courthouses or other Federal buildings. If



he is unable to obtain a suitable space free of charge, he will arrange for the payment of the necessary rent by his agency.

c. Stenographic assistance. The Hearing Officer will arrange for stenographic assistance to obtain a verbatim transcript of the hearing. (If he cannot make arrangements for a verbatim transcript it will be necessary for him to take notes as the hearing progresses, prepare a summary, and obtain the concurrence of the parties in the wording of that summary. The Hearing Officer may use a stenographer in making his notes or preparing his summary.) Expenses incurred in obtaining a transcript will be borne by the agency against whose action the appeal is made (employing agency). It will probably be more convenient for the Hearing Officer to make arrangements for his own agency to pay these expenses and then claim reimbursement from the employing agency. The authority for such a claim will be the paragraph entitled "Hearing Procedure" in Section III, Chapter 58, Title 8 AR. Employees of the employing agency should not be used as stenographers in preparing the transcript or the summary; however, employees of other agencies in the Department may be used for this duty.

d. Notification of the time and place of the hearing. The Hearing Officer, within 5 days after his receipt of the notification of his selection, shall notify the employee, employing agency, and the Director of Personnel of the time and place of the hearing. The Hearing Officer's notice to the employee and the agency shall request the parties to inform him, within 5 days, of the names of any representatives and witnesses they wish to have present at the hearing. He will also request that each list of proposed witnesses indicate in general what testimony



each witness is expected to give. The Hearing Officer's notice to the agency and the employee shall also advise them where the complete file will be available for review prior to the hearing.

e. Examine the file. The Hearing Officer will make a preliminary review of the file submitted by the Director of Personnel, including the investigation report, to become acquainted with the issues.

f. Arranging for attendance of witnesses. The Hearing Officer will make a determination as to which witnesses he will hear. (For example, in a case in which the employee was charged with specific assaults on fellow employees, he might request that civic leaders, clergymen, etc. be called to testify regarding his general character. The Hearing Officer could properly decide that such witnesses would not be heard because their testimony would not be pertinent to the issues. However, the Hearing Officer should point out to the employee that his general character could be discussed in his closing statement at the hearing and that letters or affidavits concerning his character could be made a part of the appeal file.) In selecting witnesses the Hearing Officer may also decide that it is not necessary to call certain witnesses because their testimony would be repetitive. He may also consider matters of administrative convenience such as distance to be traveled, whether the requested witnesses can be spared from their regular work, etc. After making this determination, the Hearing Officer will inform the parties which witnesses will be called. This notice should inform both parties that they may submit signed statements or affidavits to present any pertinent information which will not be presented at the hearing by the designated witnesses.



The Hearing Officer will request any agency of this Department which employs one of the designated witnesses to make such employee available to testify at the hearing. Such attendance at the hearing will be considered official duty for all purposes. It will be necessary for the parties to make arrangements, including payment of expenses, for the attendance of designated witnesses who are not employees of this Department.

5. Conducting the Hearing. a. Persons present at the hearing. This hearing is not a public hearing. The Hearing Officer shall exclude from the hearing all persons except the employee and his representative, the representative of the employing agency, the stenographer, the Hearing Officer and witness whose presence is then needed. Witnesses will be present only during the opening statement and when they are giving testimony.

b. Suggested opening statement.

By the Hearing Officer:

My name is \_\_\_\_\_. I have been designated by the Director of Personnel to conduct this hearing under the Department of Agriculture's Disciplinary Appeals Procedure as outlined in Title 8, Chapter 58, Section III. You may refer to me by name or as the Hearing Officer.

The appeal was made by \_\_\_\_\_ alleging an unwarranted and unjustified \_\_\_\_\_ from the position of \_\_\_\_\_. The action appealed from was taken by \_\_\_\_\_ (agency).

Mr. \_\_\_\_\_ (name), \_\_\_\_\_ (address), is here representing the appellant. Mr. \_\_\_\_\_ (name), \_\_\_\_\_ (title), is here representing \_\_\_\_\_ (agency).



The Department of Agriculture's disciplinary appeals procedure provides, in part that:

1. any employee in the competitive service, who has completed a probationary or trial period, shall have a right of appeal to the Secretary from certain actions of removal, suspension for more than 30 days, furlough without pay, or reduction in rank or compensation, taken by a duly authorized officer of the Department of Agriculture.
2. in connection with the appeal, the appellant shall have the right to make a personal appearance or an appearance through or accompanied by his designated representative at a hearing.
3. the employing agency shall be extended an invitation to attend and participate and both parties shall be given opportunity to provide evidence and witnesses and to cross-examine.
4. following the hearing, the Secretary, the Under Secretary, an Assistant Secretary, the Director of Agricultural Credit, the Director of Agricultural Economics, or the Director of Personnel shall make the final decision after full consideration of all the evidence including the summary or transcript of the hearing, my analysis of the charges, evidence and procedural aspects of the case, my conclusions as to whether or not each of the charges has been sustained, and my recommendation for final action.
5. following the hearing and receipt of the full file including the transcript of the hearing and my findings and recommendations, the Secretary, the Under Secretary, etc. will consider the



evidence, conclusions and findings, make a final decision, submit a copy of that decision to the proper official of the agency concerned and submit a copy to the appellant and his designated representative.

The appeal filed has been determined to be within the scope of the Department of Agriculture's Disciplinary Appeals Procedure and has been determined to have been filed within the time limit allowed by the Department.

The hearing is now underway. The purpose of this hearing is to develop all of the pertinent facts so that the Secretary of Agriculture, or other authorized official, will have all information necessary to make a final decision. A verbatim transcript will be made of this hearing, (or, where stenographic services are not available, I will make a summary of these proceedings which will be submitted for your comments.) (If a recording machine is used, make an announcement to that effect. Ask witnesses to speak distinctly and toward the microphone. Ask each person to give his name before he starts to speak. Ask that only one person speak at a time and that all persons refrain from making any unnecessary noise.)

Rules of evidence will not be strictly applied during this proceeding but reasonable bounds will be maintained as to relevancy and materiality. The adverse action appealed from and the allegations of the appellant concerning the action against him constitute the issue.

Evidence and testimony not relevant to the issue will be omitted. All witnesses should identify themselves before testifying.

The appellant's side will be heard first, inasmuch as the hearing has been scheduled at his request. An opening statement may be made



by the appellant followed immediately by an opening statement by the agency representative. The agency's opening statement may be deferred until the opening of its case if so desired by the agency.

As the hearing proceeds, both sides may question and cross-examine the witnesses. A full opportunity will be afforded both sides to bring out all of the facts. Objections may be made as to the admissability of evidence or testimony provided the reasons are stated, but mere expressions of disagreement should not be made in the interest of an orderly procedure and so that the witnesses may not be distracted. Objections will be noted for the record and the correctness of all rulings made by me will be considered and decided in arriving at the final decision. At the conclusion of any witness' testimony he may be cross-examined on any statement or questioned to clarify a point or the matter may be later introduced. At the conclusion of the presentation of all evidence and testimony of both sides, the participants may, if they so desire, sum up or make final argument.

I will guide the proceedings as necessary and assist both sides in the introduction of evidence and witnesses, making such disclosures of evidence from the appeals record and such inquiries of witnesses as appear to be necessary to bring out the full facts. In addition, I will invite questions and cross-examination of witnesses and rebuttal testimony in an effort to accomplish all of the objectives of this hearing.

c. Instruction to witnesses. The Hearing Officer may wish to have all the witnesses present during the opening statement. At that time, and in correspondence with the agencies concerning the calling of witnesses, the Hearing Officer should announce that witnesses at this



official inquiry of the Department are assured of freedom from restraint, interference, coercion, or reprisal and that any such actions will make the person responsible subject to disciplinary action. Witnesses who are employees of the Department should be instructed that it is their duty as employees to testify honestly in this official inquiry and that refusal to testify, concealment of material facts, or willful inaccuracies in their testimony may be grounds for disciplinary action. After the opening statement the witnesses should be instructed that they are not to discuss the issues in the case or their testimony among themselves. They should then be instructed to wait outside the hearing room.

d. Administering Oaths. All witnesses will give their testimony under oath or affirmation. The oath will be administered by the Hearing Officer to each individual witness immediately before his testimony by asking him to stand and raise his right hand and answer affirmatively to the following question, "Do you solemnly swear (or affirm) that the testimony you are about to give before this official proceeding of the United States Department of Agriculture is the truth, the whole truth and nothing but the truth, so help you God?" The Hearing Officer's authority to administer this oath is found in Title 5, U. S. Code, Section 93.

e. Avoiding improper matters. (The Hearing Officer may permit testimony to be entered in the record even though it is not clear that it is pertinent to the issue, if the person introducing it has a plausible explanation as to its relevance.) All possible care will be exercised however, to prohibit injection of matters into the hearing proceedings that are not pertinent to the issues and which might prejudice the appellant's case or injure his reputation.



f. Hearing Officer's Attitude. The Hearing Officer must maintain at all times a position of impartiality. He must maintain his authority to conduct the proceedings and he must not be dominated by either party. The decisions of the Hearing Officer in his conduct of the hearing are governed only by Chapter 58 of Title 8, Administrative Regulations and his own good judgment. If either party objects to any decision by the Hearing Officer such objection may be noted for the record which will be given a complete review in the Office of the Secretary before the final decision on the appeal.

g. Questioning witnesses. Each side will be given ample opportunity to question each witness. The Hearing Officer has a responsibility to invite further examination and rebuttal testimony in an effort to resolve any lack or conflict in the evidence on any point. If necessary, he should recall witnesses and participate in the examination to discharge this responsibility. The Hearing Officer must make sure that all questions asked of witnesses are disposed of by responsive answers, or are withdrawn, or that refusals to answer are noted in the record. Witnesses who have given testimony shall be cautioned not to discuss their testimony with unauthorized persons.

h. Receiving documentary evidence. The Hearing Officer may receive any documentary evidence introduced which he considers material to the case. Before accepting it for the record, however, he shall permit the opposing side opportunity to examine it and comment upon it. If necessary he should allow a reasonable recess for the opposing side to consider the evidence fully so that they may submit evidence and argument in rebuttal. If the person who signed the documentary evidence is present, he shall be called to testify and may be questioned with



regard to the document by both parties. All the evidence will be made a part of the appellate file.

i. Evaluation of testimony. In evaluating evidence including the testimony given at the hearing, the Hearing Officer will consider the relationship, official and otherwise, of the witnesses to the appellant and to the agency concerned; the length of time they have been in a position to know the facts testified upon by them; and their motivation, if any, for furnishing such information.

In evaluating the testimony furnished by the appellant at the hearing, his demeanor and attitude may be significant. Lack of cooperativeness or evasiveness are factors that shall be given consideration by the Hearing Officer. Of importance in determining the appellant's credibility will be a comparison of his statements at the hearing with replies he gave in answer to the notice of proposed adverse action or with statements he made to investigators or others at the time he was under investigation. When it appears that the appellant's testimony contains false statements, misrepresentations or concealment of material information, the discrepancies may warrant a conclusion by the Hearing Officer that the appellant's testimony on this charge is not credible and that there is serious doubt with regard to his veracity in general.

6. Stenographic Transcript or Summary. A complete verbatim transcript of the hearing will be made where possible. This transcript or summary will state the time and place of the hearing and the persons present. Where this is not possible, the Hearing Officer shall take notes during the hearing and prepare a summary of the proceedings from his notes. (He may be aided in this task by a stenographer or a dictaphone.) The



verbatim transcript or the summary shall be sent to each party by the Hearing Officer within 5 work days following the hearing for corrections, deletions, or additions. Each party shall sign the transcript or summary and submit it together with a written statement of exceptions, if any, to the Hearing Officer within 5 days. Such statements of exceptions will remain a part of the appeal file.

7. Hearing Officer's Report. a. Memorandum of analysis and recommendation. Within 10 work days after his receipt of the copies of the transcript or summary signed by the parties, the Hearing Officer will prepare and transmit a memorandum of analysis and recommendation. This memorandum shall constitute a complete report of the Hearing Officer's considerations and finding. It shall set forth his findings with respect to each specification and charge of the letter of charges which was found to be sustained as a basis for the adverse action; that is, the memorandum will set forth his finding as to whether the stated reasons for the adverse action were supported by the evidence. The memorandum also shall contain the Hearing Officer's recommendation (which shall be advisory only) with regard to the final decision on the appeal. The final decision may sustain the agency's action, modify the action, or reverse it. One copy of this memorandum shall be transmitted to the appellant and his representative, one copy shall be transmitted to the agency, and three copies shall be transmitted to the Director of Personnel with the appellate file.

- b. Appellate file. The Hearing Officer shall transmit to the Director of Personnel, with the three copies of the memorandum mentioned



above, the entire appellate file. This file will consist of the file originally transmitted to the Hearing Officer plus the summary or transcript of the hearing and all documents submitted to the Hearing Officer for his consideration.



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APPENDIX A

NOTIFICATION OF TIME AND PLACE OF HEARING

(Similar notifications must be sent to the agency official who signed the adverse decision and to the appellant.)

Dear Mr. \_\_\_\_\_:

I have been notified by Mr. Carl B. Barnes, Director of Personnel, that you have made an appeal to the Secretary under the Department's Administrative Regulations from the action removing (or suspending, demoting, etc.) you from your position as \_\_\_\_\_(title), in the \_\_\_\_\_(agency), at \_\_\_\_\_(place). The Director of Personnel has selected me to conduct a hearing of your appeal.

The hearing of your appeal will be held in \_\_\_\_\_(room), \_\_\_\_\_(building), \_\_\_\_\_(address). The hearing will commence at \_\_\_\_\_(time) on \_\_\_\_\_(date).

You should be present at this hearing. You may then present any affidavits or other written evidence which is pertinent to the issues. A copy of the file upon which the charges against you were based is available for your review at \_\_\_\_\_(address). This may be reviewed by you, or your duly authorized representative at any time prior to the hearing. The file will also be available for examination during the hearing.

You may be represented at this hearing by an attorney or other person of your choice. If you choose to be represented by an employee of this Department, and if the individual indicates a willingness to serve and his services can be spared by his agency,



his reasonable activities in preparing and presenting your appeal will be considered to be official duty and he is assured of freedom from restraint or reprisal because of such activities.

If you choose to be represented by someone who is not an employee of this Department, all expenses for his services and attendance at the hearing must be borne by you.

Please submit to me, within 5 days of your receipt of this letter, a letter informing me of the name of your representative, if any, and the persons you desire to have present at the hearing to testify in your behalf. Please indicate in a general way what testimony you expect each witness to give. If I call a witness who is an employee of this Department and his agency approves his attendance, his attendance will be considered to be official duty for all purposes and he will be assured of freedom from restraint or retaliation. If you request that a witness be called and he is not called, the reason he did not attend will be set forth in the record which I will submit to the Office of the Secretary for the final decision on your appeal.

Very truly yours,

(Hearing Officer's name and title)



APPENDIX B

ILLUSTRATION OF HEARING OFFICER'S TIME SCHEDULE

- May 1 - Receives notice from Director that he is selected.
- May 6 - Sends notice to parties setting time and place  
and requesting list of requested witnesses.
- May 12 - Receives requests for witnesses.
- May 14 - Sends designation of witnesses to parties.  
Requests agencies to make witnesses available.
- May 21 - Hearing.
- May 28 - Send to parties copies of summary or transcript.
- June 5 - Receive signed copies of summary or transcript from  
parties.
- June 19 - Send file and recommendation to Director of Personnel  
with one copy to appellant and one copy to agency.



APPENDIX C

NOTIFICATION OF WITNESSES TO BE CALLED.

(Similar notice should be addressed to the agency.)

Dear Mr. \_\_\_\_\_:

This is in regard to your appeal to the Secretary under  
Section III, Chapter 58, 8 AR.

The following persons will be called to testify at the  
hearing of your appeal on May 21:

Mr. \_\_\_\_\_  
Mr. \_\_\_\_\_  
Mr. \_\_\_\_\_  
Mr. \_\_\_\_\_

Information which you believe pertinent and which will not  
be included in the testimony of the above witnesses may be  
submitted in the form of signed statements or affidavits.

You requested the appearance of Mr. \_\_\_\_\_ as a witness.  
Since he is not an employee of this Department and we do not  
have subpoena powers, it will be necessary for you to make  
arrangements, including the payment of any expenses, for  
Mr. \_\_\_\_\_'s attendance.

Very truly yours,

(Hearing Officer's name and title)



APPENDIX D

REQUEST TO AGENCY FOR ATTENDANCE OF WITNESSES

To: \_\_\_\_\_, State Director, ASCS, Podunk, Nebraska

From: \_\_\_\_\_, Hearing Officer

At \_\_\_\_\_ (time) on \_\_\_\_\_ (date), I will hear the appeal of Mr. \_\_\_\_\_ (name of appellant) in accordance with Section III, Chapter 58, 8 AR. The hearing will be held in \_\_\_\_\_ (Room, Building & Address).

I have determined that the following employees of your agency have pertinent information and I therefore request that you direct them to be present at the hearing to testify:

NAME

TITLE

_____	_____
_____	_____
_____	_____

Their attendance at this hearing shall be considered as official duty for all purposes. Witnesses at this official inquiry of the Department are assured of freedom from restraint, interference, coercion, or reprisal and any such actions will make the person responsible subject to disciplinary action.

If you determine that it is impracticable to comply with this request, please provide a memorandum stating the reason for this declination for inclusion in the appeal file.



APPENDIX E

PROBLEM SITUATIONS AND SUGGESTED SOLUTIONS

The solutions suggested below under "What The Hearing Officer Can Do" are usually, but not necessarily always, the proper solutions. They can't be applied automatically; good judgment must be used in the individual situation.

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PROBLEM SITUATION	WHAT THE HEARING OFFICER CAN DO
<p>Agency representative or employee representative, or both, have had training in courtroom procedure. One or both of them states that legal rules of evidence and procedures used in courtrooms should apply during the hearing.</p> <p>One of the parties makes objections to testimony as being technically "irrelevant, incompetent, immaterial" or as "hearsay"; or attempts to cite precedent court decisions.</p>	<p>Inform persons concerned that the hearing is not intended to approximate a court trial and that you, as Hearing Officer, will use your own best judgment on procedure and other aspects of the hearing; that both the agency representative and the employee representative are expected to comply promptly and cooperatively and that any exceptions they may have to the methods or directions of the Hearing Officer should be dealt with in their closing statements.</p>
<p>Employee or his representative or the agency representative objects to decision made by the Hearing Officer, or the procedures for the conduct of the hearing.</p>	<p>Enter objection into the hearing record and proceed with the hearing.</p>

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PROBLEM SITUATION

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WHAT THE HEARING OFFICER CAN DO

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Complaints by employee or his representative that a procedural violation occurred before, or in the course of, preferring the charges or during the oral interview conducted by the agency or in the letter of decision.

The Hearing Officer may inform the appellant that the case has been examined for procedural sufficiency and that, after the hearing, the entire record will receive another review which will include an examination of the procedures followed. The Hearing Officer may then proceed with the hearing, telling the appellant that his contentions with regard to procedural deficiencies can be made in writing before the end of the hearing or be included in his closing statement.

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Unauthorized person enters to attend hearing.

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Suspend the hearing and take person to anteroom to explain limitations on attendance.

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Employee representative advises employee and/or his witnesses to remain silent when questioned by Hearing Officer or agency representative.

Advise employee representative that the employee and his witness have the same obligation as others to reply promptly and cooperatively. Insist upon compliance. Since this is an



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PROBLEM SITUATION

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WHAT THE HEARING OFFICER CAN DO

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official inquiry, employees of the Department are required by Administrative Regulations to give full and truthful information.

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Cross-arguing or wrangling between the employee or his representative and the agency representative.

Inform them that this only tends to confuse the issues and adds nothing of value to the hearing record. Proceed with consideration of issues.

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Verbal attacks of a slanderous nature on supervisors, management, witnesses, or fellow-employees by employee or his representative.

Remind offender that such abuse is out of order and insist upon proper decorum. Firmness is essential in this situation.

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Improper treatment of witnesses through attempts to bully or confuse them.

Remind the offender that this type of treatment is not allowed.

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Attempts to introduce unnecessary witnesses.

Rule that such testimony is not pertinent to the issues or charges and therefore not admissible.

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PROBLEM SITUATION

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WHAT THE HEARING OFFICER CAN DO

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Testimony is given in excessive detail or is repetitive.

Bring testimony to a close when it becomes evident that the point in question has been covered, and then go on to the next issue or charge. Ask for concise, responsive replies.

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Attempts to introduce "evidence" not really related to the issues, such as character references from clergymen, civic leaders, etc.

Rule that such "evidence" is not pertinent and therefore not admissible. Employee (or his representative), however, should be permitted to point out in his closing statement the employee's good character and the extenuating effect this, as he sees it, should have on the Hearing Officer's recommendation. He may also submit, letters or affidavits to this effect.

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Attempts to employ dilatory tactics, such as repetitive questioning of witnesses.

Advise person concerned, politely but firmly, that such tactics cannot be tolerated and proceed with consideration of charges or issues.

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PROBLEM SITUATION	WHAT THE HEARING OFFICER CAN DO
Request by the employee or management representative that hearing be adjourned to obtain a legal opinion from some outside authority.	Advise him that this is not necessary and that you will use your own best judgment on the point in question. Objections, if any, should be entered into the hearing record or included in closing statements.
Conflict in testimony presented by witnesses.	If it seems advisable, dismiss witness and recall the witnesses whose testimony conflicts, one at a time, to clear up points in question.
Agency representative introduces additional incidents or infractions which have occurred after the date of the charge letter.	Tell him no consideration can be given to allegations against the appellant not contained in the letter of charges. However, the agency representative should be allowed to rebut allegations by the appellant that his conduct or reputation is good, etc.
Employee or his representative, for the first time, alleges discrimination because of race, color, religion or national origin.	Announce that the allegation of discrimination will not be considered at this hearing but will be referred to the Director of Personnel immediately



PROBLEM SITUATION	WHAT THE HEARING OFFICER CAN DO
	<p>for handling in accordance with Chapter 46 of Title 8 AR; that the present hearing will be continued to consider the other issues of the appeal; that no final decision can be made to sustain the agency's action until the allegation of discrimination has been resolved but that he will make his report and recommendations with respect to the issues properly before him.</p>
<p>Attempts on the part of the employee's representative to dominate the hearing.</p>	<p>Tactfully remind him that conducting the hearing is your responsibility and that failure to comply promptly with your rulings or to cooperate will result in closing the hearing and referring the case to the Director of Personnel.</p>
<p>The employee or his representative challenges the validity of a prior disciplinary action which was cited as a past record in the notice of proposed adverse action.</p>	<p>Tell him that he may make a statement for the record expressing his views concerning the consideration to be given to the past record cited, but that challenging the validity of the action is not permitted.</p>



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PROBLEM SITUATION

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WHAT THE HEARING OFFICER CAN DO

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Employee admits charge(s).

Those charges admitted by the employee in his reply or during the hearing need not be supported by the oral testimony of witnesses at the hearing itself. However, ask the employee and the agency representative if they desire to present witnesses to have the record show the particular circumstances of the offense.

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The employee or his representative fails to cooperate with and abide by the decisions of the Hearing Officer, even after reasonable warning.

As a last resort the Hearing Officer may suspend the hearing and refer the case to the Director of Personnel.

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The agency representative, after reasonable warning, (a) fails to cooperate with and abide by the decisions of the Hearing Officer, or (b) attempts to dominate the hearing.

As a last resort, the Hearing Officer in his discretion, may, disqualify the agency representative from further participation and suspend the hearing temporarily until a substitute can be named by the agency.

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